

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
PREMIER FLORIDA AUTO SALES AND
LEASING, LLC,

Plaintiff,

-against-

ORDER

10 CV 4428 (DRH) (WDW)

MERCEDES-BENZ OF MASSAPEQUA, LLC,

Defendant.

-----X

HURLEY, Senior District Judge:

On October 10, 2012, defendant, counter-claimant Mercedes-Benz of Massapequa, LLC (“MBM”) moved to dismiss Premier Florida Auto Sales and Leasing, LLC’s (“Premier”) complaint pursuant to Federal Rules of Civil Procedure 41(b) and 37, and for default judgment on its counterclaims pursuant to Federal Rule of Civil Procedure 55. (*See* Docket No. 28.) These motions were referred to Magistrate Judge William D. Wall on October 23, 2012. On November 5, 2012, Judge Wall issued a Report and Recommendation which recommended that both the complaint be dismissed and that default judgment on the counterclaims be entered, with damages to be determined at an inquest. By Order dated February 14, 2013, the Court adopted Judge Wall’s November 5, 2012, Report and Recommendation and dismissed plaintiff’s complaint pursuant to Fed. R. Civ. P. 41(b). In addition, the Court noted Premier’s default, entered default judgment in favor of MBM, and referred the matter back to Judge Wall in order to determine the relief to be awarded to MBM.

On April 17, 2013, Judge Wall issued a Report and Recommendation which recommended that MBM be awarded \$44,526 in charge-backs for the five vehicles listed in the counterclaims along with \$115,500 in “cascading losses” based on those five vehicles, for a total of \$160,026. (Docket No. 37.) On April 18, 2013, plaintiff, counter-defendant Premier was served with a copy of the Report and Recommendation. (Docket No. 38.) More than fourteen days have elapsed since the Report and Recommendation was served and to date, plaintiff, counter-defendant has not filed any objections.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. As such, the Court adopts Judge Wall’s April 17, 2013 Report and Recommendation as if set forth herein. Accordingly, the Court hereby directs that defendant, counter-claimant MBM recover from plaintiff, counter-defendant Premier the amount of \$160,026.

The Clerk of Court is directed to enter judgment in accordance with this Order and the Order dated February 14, 2013. Upon entry of judgment, the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
May 20, 2013

/s/
Denis R. Hurley
United States District Judge